

JUL 28 2006

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HECTOR FERNANDEZ-ESPARZA,

Defendant - Appellant.

No. 05-10300

D.C. No. CR-04-00276-RLH

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Hector Fernandez-Esparza appeals from the 54-month sentence imposed following his guilty-plea conviction for unlawful reentry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Fernandez-Esparza contends that the district court erred in enhancing his sentence under 18 U.S.C. § 3553(b) based on non-jury fact-finding regarding his prior conviction. His contention is foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), even though it has been called into question, unless it is explicitly overruled by the Supreme Court); *United States v. Quintana-Quintana*, 383 F.3d 1052, 1053 (9th Cir. 2004) (order).

Fernandez-Esparza next contends that his sentence was unreasonable pursuant to *United States v. Booker*, 543 U.S. 220 (2005). We disagree.

Because the district court discussed Fernandez-Esparza's advisory sentencing guidelines range as well as sentencing factors from 18 U.S.C. § 3553(a), the 54-month sentence is reasonable. *See United States v. Plouffe*, 436 F.3d 1062, 1063 (9th Cir. 2006) ("In determining whether a sentence is unreasonable, we are guided by the sentencing factors set forth in 18 U.S.C. § 3553(a), including the sentencing range established by the Sentencing Guidelines."); *see also United States v. Diaz-Argueta*, 447 F.3d 1167, 1171 (9th Cir. 2006) (stating that the district court is not required to address all of the section 3553 factors).

AFFIRMED.